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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,251	06/09/2005	Wolfgang Jobmann	D4695-00136	1872

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DUANE MORRIS LLP - Philadelphia  
IP DEPARTMENT  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103-4196

EXAMINER
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JACYNA, J CASIMER

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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01/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,251	<b>Applicant(s)</b> JOBMANN, WOLFGANG	
	<b>Examiner</b> J. Casimer Jacyna	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3, 6-12 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 295 12 609. DE discloses a barrier device including a cover 2 above a reservoir 1 that is capable of holding filled in canned or bottled drinks because it is well known in the art to fill garbage containers with ice and either or both canned and bottled drinks during garden parties and thereby container 1 is a filled in drinks supply and dispenser as claimed, a cover reaching over portion adjacent and surrounding 4, a barrier device 5 and a blocking device 7-9, wherein when the blocking device is in a locking portion as shown in figure 2 with 9 extended the barrier device 5 is inhibited from being displaced as claimed. In regard to claim 12, De discloses a first end with a triangular projection that abuts 13 and a second end that is shaped to fit within and abut the lock cylinder 7.

4. Claims 1-3, 6-12 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 295 12 609 in view of Prepodnik et al. 4,519,219. DE discloses a barrier device including a cover 2 above a reservoir 1 that is a garbage container

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substantially as claimed but does not disclose the usage of the reservoir as a filled in drinks supply. However, Prepodnik teaches on column 1, lines 20-22, that it is known in the prior art to use a garbage container as a filled in drink supply for the purpose of keeping the drinks cold by filling the garbage container with ice. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the garbage container of DE could also be used as a filled in drinks supply as, for example, taught by the prior art discussed in Prepodnik in order to keep the drinks cold with ice placed in the garbage container.

5. Claims 1-3, 6-9, 13, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Netherlands 8402362. Netherlands discloses a barrier device including a cover 2 above a reservoir 1 that is capable of holding filled in canned or bottled drinks as claimed if a user desired to store drinks in the container 1, a cover reaching over portion 4, 18, a barrier device 15 and a blocking device 30.

6. Claims 1, 2, 8-10, 13-18 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith 2,083,621. Smith discloses a barrier device including a cover 15 above a reservoir 11 that is capable of holding a fluid as claimed if a user desired to pour a drink into the container 11, a cover reaching over portion 16, a barrier device 18 that is displaceable with respect to the portion 16 by bending toward and away from 16 for insertion into and removal from 25 and a blocking device 25. In regard to claims 16 and 17, Smith discloses an annular projection 13 and an assigned projection 19, 20.

7. Claims 1, 2, 4, 5, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Peckels 5,507,411. Peckels discloses a barrier device including a cover

12 that in a normal rest position as shown at 10 in figure 1 is disposed above a reservoir 14 that holds a filled in drink as claimed, a cover reaching over portion that extends over the edge of the container as shown adjacent 88 in figure 5, a barrier device 90 that is a barrier device because it prevents or is a barrier to fluid flow through the cover and is displaceable with respect to the portion as shown in figures 5 and 6 and is displaceably supported as claimed by cover housing portion 80 and a magnetizable blocking device 98, 100. In regard to claim 5, parent claim 4 is written in the alternative where the blocking device may either be magnetizable or movable by a magnet. Since Peckels reads on the first alternative and claim 5 is further defining the second alternative, claim 5 does not present any limitation that can overcome the Peckels reference because this alternative is not being chosen.

8. Applicant's arguments filed 11/4/2008 have been fully considered but they are not persuasive. Applicant contends that De does not disclose every claimed element, however, using the reservoir as a drink supply is not an element but a function or use. The reservoir disclosed in DE is capable of use as a drink dispenser and the reference to Prepodnik clearly teaches using garbage containers as drink dispensers as claimed. The portion of cover 2 that surrounds 4 is clearly extending over or reaching over the edge of the reservoir as claimed and as shown in the figures since the barrier arrangement 3-10 is shown on the exterior of the container 1 in figure 1. In regard to NL, the fact that it can hold canned or bottled beverages makes it a reservoir as claimed. As shown in the figures, the barrier arrangement of NL reaches over and then under an edge of the reservoir at 6. The barrier device 15 does move with respect to 6

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and is inhibited from displacement by 30 that is shown in figure 3 as being located in a compartment 26. In regard to Smith, the claims only define that the barrier device is displaceably supported period. The end 33 of the barrier device does move or displace with respect to the reaching over portion even if the displacement is transverse and it is supported as claimed in a manner to enable it to be displaced by the cantilever connection at B or 18. In regards to Peckels the rejection clearly states that the cover is 12 and 10 is a normal rest position with the cover 12 being location above the reservoir as claimed. It is clearly stated that 10 is a position and not the cover. The portion 88 where the barrier device 90 is located clearly extends past or reaches over the edge of the reservoir as claimed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754